DOCUMENT RESUME

ED 383 058 EA 026 709

AUTHOR	Crampton, Faith E.; Whitney, Terry N.
TITLE	Equity and Funding of School Facilities: Are States at Risk?
INSTITUTION	National Conference of State Legislatures, Denver, CO.
PUB DATE	Feb 95
NOTE	10p.
AVAILABLE FROM	National Conference of State Legislatures (NCSL) Book Order Dept., 1560 Broadway, Suite 700, Denver, CO 80202.
PUB TYPE	Collected Works - Serials (022) -- Reports - Evaluative/Feasibility (142)
JOURNAL CIT	State Legislative Report; v20 n1 Feb 1995
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Constitutional Law; *Court litigation; *Educational Equity (Finance); *Educational Facilities Improvement; Elementary Secondary Education; *Equalization Aid; Finance Reform; Fiscal Capacity; School District Wealth; *State Aid; State Legislation

ABSTRACT

Inequality in school facilities is emerging as a pivotal factor in court decisions that have ruled state school-funding systems unconstitutional. This report examines cases in three states--Arizona, Ohio, and Texas--where courts considered school facilities paramount in ruling the funding system unconstitutional. Arizona's school funding system was the first to be declared unconstitutional based solely on the condition of school facilities. The Ohio court decision detailed a constitutionally acceptable system of school funding. The lack of a separate facilities component in Texas could render the entire school finance system unconstitutional. Because states should not expect significant assistance from the federal government for school facilities, it is recommended that states conduct statewide assessments of the condition of existing school facilities and needed new school construction; develop an equitable funding formula; and mandate the allocation of school aid for routine maintenance. One figure is included. Contains 13 notes. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

NCSL STATE LEGISLATIVE REPORT

ED 383 058

February 1995
Vol. 20, No. 1

Equity and Funding of School Facilities: Are States at Risk?

By
Faith E. Crampton
Program Principal
and
Terry N. Whitney
Senior Policy Specialist

Inequality in school facilities is emerging as a pivotal factor in court decisions to rule state school funding systems unconstitutional. Traditionally plaintiffs have crafted their main arguments based on inequities in operating funds among school districts. In recent years, however, some school funding systems have been overturned because of disparities in school facilities across the state. This state legislative report looks at cases in three states—Arizona, Ohio and Texas—where courts considered school facilities paramount in ruling the funding system unconstitutional.

Historically, courts have focused on the wide range in per pupil expenditures among a state's school districts caused by property wealth. Property-poor school districts have maintained that in order to spend at the same level as more affluent districts they had to tax themselves at a much higher rate. This situation spawned litigation in the 1970s that continues up to the present. In 1994 alone, approximately 20 states were involved in school finance litigation. (See map in Figure 1.)

Support of capital outlay costs is based primarily on a school district's property wealth.

Current State Role in Funding School Facilities

Few states provide substantial support for the construction and maintenance of school facilities, generally referred to as capital outlay. Overall, capital outlay represents a very small part of state education budgets, ranging from zero in Arkansas, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nevada, North Dakota and Virginia to 11.2 percent in California. (1, pp. 43-46) Twelve states incorporate some equalization provision in their distribution of capital funds although they may equalize only a portion of the total cost. (1, pp. 43-46) The ability to support capital outlay costs is based primarily on the property wealth of individual

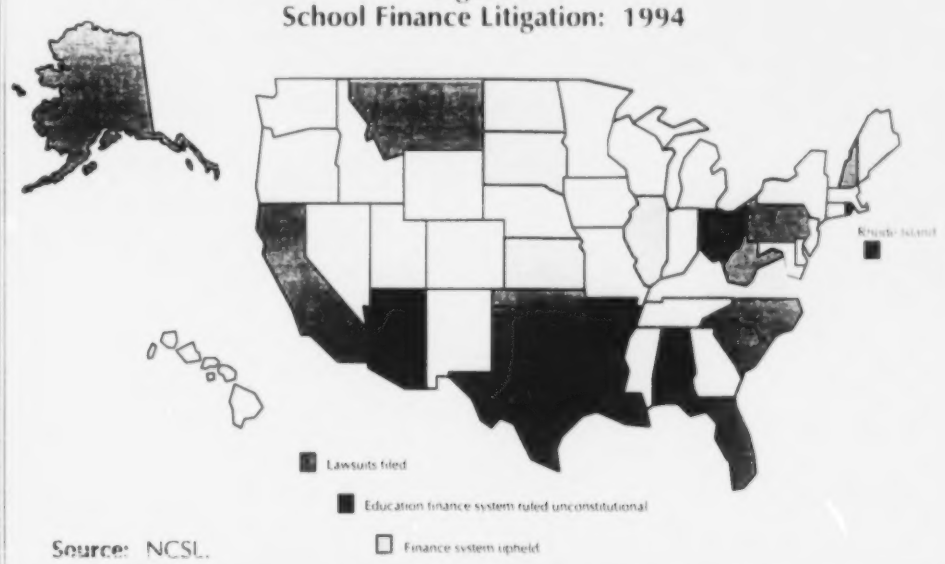
EA 026 709

National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, Colorado 80202
(303) 830-2200
FAX (303) 863-8003

BEST COPY AVAILABLE

"PERMISSION TO REPRODUCE THIS MATERIAL IN OTHER THAN PAPER COPY HAS BEEN GRANTED BY
F. Loos
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Figure 1
School Finance Litigation: 1994



Source: NCSL.

school districts. Property-poor districts may face significant fiscal hardship in building a new school or renovating an existing one.

Although local school districts are the primary funders for capital outlay and resulting debt service, the state role in facility funding can be characterized by the limits states place on local funding. Among state-imposed limitations are debt limits that prohibit exceeding a designated percentage of taxable property valuation and requirements for voter approval to issue bonds. In many states these votes require a 60 percent super majority which makes it harder for school districts to receive the approval margin necessary to fund maintenance, upkeep and new facility projects. (1, pp. 43-46)

Studies Estimate Capital Outlay Needs in Billions of Dollars

According to national and state studies, deferred maintenance on aging school buildings, renovation of existing facilities, and needed new construction would cost billions of dollars. A recent report to the Congress by the General Accounting Office (GAO) estimated the cost of deferred maintenance and upgrades to be $112 billion. (2, p. 1) However, its estimate did not include replacement or new construction. An earlier study by the Education Writers' Association included replacement construction and set the total at $125 billion. (3, p. 4) Since this study was completed in 1989, one must take into account inflation and set today's figure even higher. A 1991 study by the American Association of School Administrators (AASA) concluded that 74 percent of the nation's school buildings ought to be replaced due to age and condition. (4, p. 8)

BEST COPY AVAILABLE

Without exception, studies point to the large backlog of deferred maintenance as a serious capital outlay issue. However, the cost of deferred maintenance is compounded each year it is ignored. As a report in Hawaii noted, "Major repairs ensure the long-term usefulness of a building. When these are ignored, greater long-term costs results. Over the years, because of inadequate funding, a large backlog of deferred projects developed...The backlog now stands at 10,849 projects estimated at $254,574,174." (5, p. 49) Larger states, such as Ohio, estimate $10 billion is needed for capital outlay (6, p. 467) while Texas estimates $2 billion to $3 billion. (7, p. 6)

Studies point to a backlog of deferred maintenance as a serious capital outlay issue.

Some states, particularly in the West, are experiencing significant increases in enrollment, necessitating the building of new schools. California has projected it will educate approximately 7 million elementary and secondary students in the year 2000, an increase of 2 million from the 1991-1992 school year. (8, p. 12) Between 1984 and 2002, the U.S. Department of Education foresees a substantial rise in enrollments for several other Western states: Alaska, 29.6 percent; Arizona, 34.9 percent; Hawaii, 46.9 percent; and New Mexico, 35.4 percent. (9, p. 115) Together these factors set the stage for successful challenges to existing school finance formulas in Arizona, Ohio and Texas.

Unequal School Facilities and Recent Court Cases

Arizona

In July 1994, Arizona became the first state whose school funding system was declared unconstitutional based solely on the condition of school facilities. The state supreme court declared, "The court observed that the undisputed record showed enormous facility disparities among the various school districts and traced these disparities to the statutory scheme, which relies in large part on local property taxation for public school capital requirements." (10, p. 3) Using the same logic applied in many previous decisions on operating funds, the court stated, "The quality of a district's capital facilities is directly proportional to the value of real property within the district." (10, p. 4) The court noted that even though a portion of each district's state equalization aid is budgeted for capital improvements, property-poor districts may find it insufficient. It is important to note that the court did not find the property tax itself unconstitutional even though the ruling was based on disparities of property wealth. Rather it was the state's failure to come up with a funding system that offset disparities in property wealth that was at the core of the decision, violating Arizona's constitutional provision to provide a "general and uniform" education to the state's children. The court left specific remedies of the funding inequities to the Legislature. At present the state is conducting a district-by-district survey of school facilities.

Arizona's school funding system was the first to be declared unconstitutional based solely on the condition of school facilities.

Ohio

The Ohio court decision detailed a constitutionally acceptable system of school funding.

About the same time, a lower court in Ohio overturned the state's school funding system in a sweeping decision that frequently mentioned disparities in school facilities as a source of inequity. One of the court's main findings was: "Taxpayers in plaintiff school districts, because of having lower assessed valuation per pupil, must tax themselves at greater rates to produce the same level of revenue to fund school facilities than taxpayers in school districts having higher levels of assessed valuation per pupil." (6, p. 454) The court struck down the state statute for funding school facilities, "The Classroom Facilities Act," stating, "This chapter contributes to the constitutional deprivations demonstrated in the case, not because of the funds provided under the act but because of the extent to which the legislature has failed to provide sufficient funds to serve the facilities needs of Ohio's public schools." (6, p. 459) Unlike the Arizona ruling, the Ohio decision went on to describe in considerable detail a constitutionally acceptable system of school funding, emphasizing the necessity of facilities in good repair, of sufficient size to avoid overcrowding, and fully accessible to handicapped students. The court also noted that sufficient facilities encompassed enabling "both female and male students to compete equally within their own schools as well as schools across the state of Ohio and worldwide in both academic and extracurricular activities." (6, p. 461)

Texas

The state of Texas in 1987 may have been instrumental in starting the trend to more closely scrutinize the equity of school facilities. In a series of court cases referred to as Edgewood I through Edgewood V, Texas courts declared inequities in school facilities to be as unacceptable as inequities in operating expenditures. In the December 1993 Edgewood IV ruling, the district court reiterated its original finding: "The supreme court's requiring 'substantially equal access to similar revenue per pupil at similar levels of effort' has always applied to both operation costs and capital expenditures." (11, p. 74) The court summarized the equity problem in facilities: "In Texas, capital expenditures have been made almost solely from local tax dollars and almost solely from borrowing. As a consequence..., vast disparities exist between the districts' ability to make capital expenditures. As a result, debt tax rates are higher in poor districts than they are in wealthy districts. The disparities in local property wealth mean that the higher taxes in poor districts generate fewer dollars to retire debt." (11, p. 73) The court concluded that this situation resulted in unequal facilities. In the Edgewood IV ruling, the court stated: "The plaintiffs are entitled to further injunctive relief to ensure compliance with this court's 1987 order relating to facilities." (11, p. 75) The court stopped short of mandating a particular solution; instead it decided "to give the Legislature a further opportunity to address the problem." (11, p. 76)

In its most recent ruling of January 1995 (Edgewood V), the state supreme court was asked to consider whether the Legislature's latest efforts to reform the education finance system satisfied Article VII, Section 1, and other provisions of the Texas Constitution. The Legislature had enacted Senate Bill 7 during the 1993 biennium, marking its fourth attempt to satisfy the state supreme court's initial unconstitutional ruling in 1989. Although the court ruled that the new

public school finance system was constitutional, the opinion noted, "Implicit in [the legislature's duty to suitably provide for an efficient system of public schools] is the state's duty to provide all districts with substantially equal access to the operations and facilities funding necessary for a general diffusion of knowledge. (12, p. 47) The court warned, "Indeed, the evidence at trial shows that the lack of a separate facilities component has the potential of rendering the school finance system unconstitutional in its entirety in the very near future. (12, p. 47)

The lack of a separate facilities component in Texas could render the entire school finance system unconstitutional.

The Texas Legislature faces a serious challenge in trying to provide state funds for equitable school facilities as it faces a $2 billion to $3 billion dollar backlog of capital expenditure and a student population growing at an annual rate of approximately 70,000. Also, Texas, unlike most states, lacks a state income tax as a major source of revenue.

Recommendations for Policymakers

Even with last year's federal legislation, the Education Infrastructure Act, states should not look to the federal government for significant assistance in the area of school facilities. The bill authorizes only $100 million for repairs, a fraction of what is needed. (2, p. 1) Two of the neediest school districts, New Orleans and Washington, D.C., have been estimated to require half a billion dollars each. (13, p. A21) Second, the funding of elementary and secondary education has fallen historically to individual states. In light of recent litigation, states would be well served to actively address equity and funding of school facilities through assessing and planning for school facilities needs, equitably funding capital outlay and demanding greater accountability on the part of school districts for routine maintenance.

Assessment and Planning

Before considering a larger role for state funding of school facilities, policymakers may want to:

- Conduct a statewide assessment of the condition of existing school facilities
- Conduct a statewide assessment of needed new school construction

A thorough assessment lays the groundwork for short- and long-range planning for school facilities at both the state and local levels. In the short term, critical capital outlay needs must be addressed, such as deferred maintenance. In long-term planning, states set mechanisms and funding into place to avoid a backlog of capital needs and anticipate needed new construction.

Equitable Funding

States, such as New York, have made a concerted effort to provide a substantial level of support for school facilities and to equalize such aid based upon school district' wealth. First, the state has broadened the definition of school district wealth to include personal income as well as assessed valuation. The percentage of state assistance is in inverse propor-

tion to a school district's wealth, with a district of average wealth receiving approximately 50 percent of the cost of a capital project from the state. Although most school districts must still pass a bond issue in order to undertake major capital projects, such as building a new school or making major renovations to an existing one, the state will fund up to 90 percent of the cost. With state funding does come state control: No bonds may be sold before the state education department grants approval of the capital project.

Accountability

Policymakers might also consider requiring that a portion of school aid be used for routine maintenance. At present most school funding formulas are designed to assist districts with operating expenditures, including personnel, supplies and equipment, and routine maintenance and operational costs. However, few state funding formulas mandate the allocation of funds among these items. In order to ensure that routine maintenance needs are attended to in a timely manner, policymakers may want to require that a portion, for example, 5 percent of general state aid to school districts, be utilized for routine maintenance.

These recommendations may assist policymakers in reducing the risk of school finance litigation in their states. At the same time, they will be improving the conditions under which many children learn.

Notes

1. Gold, Steven, Ed. *Public School Finance Programs of the United States and Canada, 1990-1991*, Vol., 1 and Vol. 2. Albany, New York: Center for the Study of the States, The Nelson A. Rockefeller Institute of Government, State University of New York, 1992.

2. "School Fixup Bill $112 Billion," Clari.news.education. Associated Press, February 2, 1995.

3. *Wolves at the Schoolhouse Door: An Investigation of the Condition of Public School Buildings.* Washington, D.C.: The Education Writers Association, 1989.

4. *Schoolhouse in the Red: A Guidebook for Cutting Our Losses.* Arlington, Virginia: American Association of School Administrators, 1992.

5. *A Study of Curriculum, Budgeting, and Repair and Maintenance for Hawaii's Public Schools.* A Report to the Governor and the Legislature of the State of Hawaii. Report No. 92-31. Honolulu, Hawaii: The Auditor, State of Hawaii, 1992.

6. *DeRolph vs. State of Ohio*, (22043). Common Pleas Court, Perry County, Ohio, July 1, 1994.

7. "State Shortchanges Schools on Facilities," *Equity Center News & Notes*, Vol. 13, No. 5, September 1994.

8. *No Room for Johnny: A New Approach to the School Facilities Crisis*. A report of the Little Hoover Commission. Sacramento, California: Commission on California State Government Organization & Economy, 1992.

9. Gerald, Debra E., and William J. Hussar. *Projections of Education Statistics to 2002*. Washington, D.C.: National Center for Education Statistics, U.S. Department of Education, 1991.

10. *Roosevelt Elementary vs. Bishop*, (CV-93-0168-T/AP). Supreme Court of Arizona, July 21, 1994.

11. *Edgewood vs. Meno*, (362,516). District Court of Travis County, Texas, December, 1993.

12. *Edgewood vs. Meno*, (94-0152). The Supreme Court of Texas, January 30, 1995.

13. Honan, William H. "Many Schools Are Unsafe, Study Says." *New York Times*, February 2, 1995, A21.

State Legislative Reports

"The Changing Federal Laboratories: Is There A Role for the States?" (Vol. 19, No. 7) (ISBN 1-55516-094-8)	May 1994
"When Health Care Is Not Enough: Support Services for Pregnant Women and Infants" (Vol. 19, No. 8) (ISBN 1-55516-226-6)	June 1994
"Superfund and Economic Development" (Vol. 19, No. 9) (ISBN 1-55516-227-4)	July 1994
"Electric Vehicles: Promise and Reality" (Vol. 19, No. 10) (ISBN 1-55516-381-5)	July 1994
"Clean Air Act Mandates: Funding, Business Opportunities and Economic Development" (Vol. 19, No. 11) (ISBN 1-55516-380-7)	July 1994
"The Revised Model Accreditation Plan for Asbestos" (Vol. 19, No. 12) (ISBN 1-55516-379-3)	August 1994
"Supporting Families" (Vol. 19, No. 13) (ISBN 1-55516-378-5)	August 1994
"Beyond Superfund: Voluntary Industrial Cleanup" (Vol. 19, No. 14) (ISBN 1-55516-382-3)	September 1994
"Lender and Successor Liability for Hazardous Waste Cleanup" (Vol. 19, No. 15) (ISBN 1-55516-383-1)	September 1994
"Uniform and Reciprocal Motor Carrier Programs under ISTEA" (Vol. 19, No. 16) (ISBN 1-55516-384-X)	October 1994
"Managing Growth in Western Rural Communities" (Vol. 19, No. 17) (ISBN 1-55516-385-8)	October 1994
"Risk Assessment: A Glance at the Non-Technical Aspects" (Vol. 19, No. 18) (ISBN 1-55516-386-6)	November 1994
"Equity and Funding of School Facilities: Are States at Risk?" (Vol. 20, No. 1) (ISBN 1-55516-388-2)	February 1995

STATE LEGISLATIVE REPORT is published 12 to 18 times a year. It is distributed without charge to legislative leaders, council and research directors, legislative librarians, and selected groups for each issue. For further information on STATE LEGISLATIVE REPORT or to obtain copies, contact the NCSL Book Order Department in Denver at 303/830-2054.

Copyright 1995 by the National Conference of State Legislatures.

This document is printed on recycled paper.

ERIC Clearinghouse
College of Education
University of Oregon
1787 Agate Street
Eugene, OR 97403-1923

Bulk Mail
U.S. Postage
PAID
Denver, Colorado
Permit No. 1331

STATE LEGISLATIVE REPORT
National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, Colorado 80202-5140

STATE LEGISLATIVE REPORT

National Conference of State Legislatures

BEST COPY AVAILABLE